

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: JUN 23 1999

Contact Person: [REDACTED]

ID Number: [REDACTED]

Telephone Number: [REDACTED]

NO PROTEST RECEIVED
Release copies to District

Date 9/27/99

Summary [REDACTED] 000

Employer Identification Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

Your purpose is to expand the use of the administrative ethics and justice procedures of [REDACTED]... through the following activities:

To expand the use of [REDACTED] administrative technology through the standard use of [REDACTED] administrative and ethics and justice procedures.

(b) To support from time to time certain social improvement exempt organizations whose goals and purposes align with those of the [REDACTED]

You are the outgrowth of [REDACTED] and you are a membership organization. You provide a dispute resolution service to people involved in business disputes. The service is primarily intended for, and has primarily been delivered to, members of the [REDACTED] ([REDACTED]). You are composed of an admin unit, dispute resolution unit, and an ethics unit.

[REDACTED] is a religious fellowship dedicated to expanding the use of administrative, ethics and justice procedures of [REDACTED] in the world of commerce in the [REDACTED] area and the [REDACTED]. Scientologists who work in the [REDACTED]

commercial world become [redacted] members. Its members are business owners and managers who support its purposes. [redacted] are formed by [redacted] and operate in a specific geographical area. Charter members sign a membership agreement with [redacted]

In the dispute resolution process the claimant presents a written claim against the respondent, who then presents a written response. Generally a hearing is held with one to three mediators and with or without legal counsel. The purpose of the hearing is to bring about a renewed understanding between the parties so they can take responsibility for their dispute and work out the solution themselves. The hearing is divided into three parts: (1) a review of the basic materials on ethics, justice, communications and responsibility and other of [redacted] writings that are specifically applicable to the particular areas of dispute; (2) conduct of an inquiry into possible external sources of the dispute; and (3) helping each party recognize their responsibility for having created the dispute, and helping the parties to reach agreements that will resolve the dispute.

Disputants pay a filing fee and a mediation fee. The fees are computed at the rate of \$[redacted] an hour or on blocks of time. It was [redacted] intention that fees charged for the delivery of the ethics and justice procedures be in alignment with his policy that reasonably priced and easily obtained justice are requisites to any civilization. Parties to mediation are generally charged a minimum of \$[redacted] prior to the mediation as experience has shown that these sessions generally run at least [redacted] hours.

One half of the fees charged for a mediation are paid to the Mediator, and a portion of the filing fee is paid to the Case Administrator, who handles all the logistics of the case such as collecting the Claim and Response, scheduling the hearing, etc. The remainder of the fees are retained by the corporation to cover general operating costs. You stated that initially mediators and case administrators were paid one half of the mediation and consultation fees. The policy with respect to payment of consultants, mediators, and case administrators has been revised. You now receive [redacted] of the fees collected for mediations. Of the balance, [redacted] goes to the mediator; [redacted] to the Administrative Unit; [redacted] to the Ethics Unit; and [redacted] to the Case Administrator. The same applies to fees collected for an Ethics consultation.

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Mediators and other personnel are essentially volunteers. There are no full- or part-time employees. The compensation paid to the Mediator and Case Administrator is intended to reimburse them for expenses incurred in performing the services rendered. You stated the reimbursement is for the time the Mediator spends in preparation for the provision of ethics and mediation services as well as for the time spent in their actual delivery. Also factored into their compensation is the time spent away from their regular professional work. Mediators and consultants also are expected to provide their own equipment for recording the sessions. If the services are delivered in their own offices, part of the payment is to defray the overhead, i.e. rent, telephone, gas, and electricity. Personnel are responsible for accounting for their own out of pocket expenses. They deduct these expenses on their tax returns and pay taxes on the amounts received in excess of such expenses as part of their taxable income. You do not keep records of such out of pocket expenses. Mediators and consultants tend to be business or professional persons. You also stated that if you did not provide reasonable reimbursement, you could not expect to find competent people to volunteer to train for and then conduct your activities.

Mediators must complete formal dispute resolution training. Mediators and consultants have in excess of 200 hours of training. Each attends at least one seminar per year and often two or three.

You also stated that your program aligns with the purpose of charitable organization stated in ' 1.501(c)(3)-1(d)(2) of the regulations, in that it serves to "lessen the burdens of government" by providing an alternative dispute resolution process and lessens the overburdened judicial system. You provide individualized consultation with business people on the proper application to their businesses of the codes and tools of ethics.

You sponsor seminars and workshops throughout the year of interest to the business public. Programs include Financial Planning, Basic Organization, Inter-Office Communications Systems, Time and Stress Management, Marketing, Sales, etc. Workshops may be in office space provided by ████████ members or by local community or church organization. Some may be in rental space. An admission fee will be charged to help defray the costs, which may include hiring a speaker, printing workshop materials, and promoting the event.

Volunteers periodically contact the persons who are working with the standards prescribed in the writings of ████████████████████

and assist them in setting targets for implementation of each consecutive step of the program within their company. There is no charge to persons participating in the program.

There are four members of your governing board. Members are volunteers but may be compensated for services as Mediator, Consultant or Case Administrator. Your by-laws provide for three to five directors. Article III provides that Directors shall serve without compensation, except that a reasonable fee may be paid to directors for attending regular and special meetings of the board. Directors are allowed reasonable advancement or reimbursement of expenses incurred in the performance of their duties. Regular Board meetings are held each week. The members elect the Directors.

Membership requirements are (1) a proven good production record as a businessperson; (2) a high ethics level; (3) no criminal record; (4) ability to communicate; and (5) willingness and ability to improve conditions in the environment. Members do not pay fees or dues and are expected to commit at least two hours per week to attending weekly membership meetings, as well as additional time to perform other activities that may be required to further the purposes of the applicant. Members are not solicited through promotional materials.)

In your [redacted] letter, you stated that currently you are small and all of your members are currently board members and all business is conducted at the board meetings. Currently members of the board are not paid compensation for attending meetings and it is not anticipated that any such compensation will be paid in the near future.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, scientific, literary, or educational purposes as long as, among other conditions, no part of the net earnings inure to the benefit of any private individuals or shareholders.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that an organization must be both organized and operated exclusively for one or more of the purposes specified in section 501(c)(3) of the Code in order to be exempt as an organization described in such section.

Section 1.501(c)(3)-1(b)(1)(i) of the Income Tax Regulations provide that an organization is organized exclusively for one or

more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage; otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it is engaged primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not organized or operated for one or more exempt purposes unless it serves a public rather than a private interest. Accordingly, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator, shareholders, or persons controlled, directly or indirectly, by such private interests. The specific purposes are:

- (a) Religious,
- (b) Charitable,
- (c) Scientific,
- (d) Testing for public safety,
- (e) Literary,
- (f) Educational, (or)
- (g) Prevention of cruelty to children or animals.

Section 1.501(c)(3)-1(d)(3) of the regulations defines the term "educational" as used in section 501(c)(3) to include:

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(e) of the regulations states that an organization may be exempt under section 501(c)(3) even though it operates a trade or business as a substantial part of its

activities if the operation of such trade or business is in furtherance of the organization's exempt purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the facts and circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. An organization, which is organized and operated for the primary purpose of carrying on an unrelated trade or business, is not exempt under section 501(c)(3).

Rev. Rul. 85-1, 1985-1 C.B. 177, provides that an organization that provides funds to a county's law enforcement agencies to police illegal narcotic traffic lessens the burdens of government and therefore, qualifies for exemption under section 501(c)(3) of the Code.

Rev. Rul. 85-2, 1985-1 C.B. 178, provides that under the circumstances described, an organization that provides legal assistance to guardians ad litem who represent abused and neglected children before a juvenile court that requires their appointment lessen the burdens of government and, therefore qualifies for exemption under section 501 (c) (3) of the Code.

Rev. Rul. 72-369, 1972-2 C.B. 245, provides that an organization formed to provide managerial and consulting services at cost to unrelated exempt organization does not qualify for exemption under section 501(c)(3) of the Code. Rev. Rul. 71-529 distinguished.

Rev. Rul. 71-529, 1971-2 C.B. 234, provides that an organization controlled by a group of exempt organizations and providing investment management services for a charge substantially less than cost solely to that group qualifies for exemption under section 501(c)(3) of the Code.

In Universal Church of Jesus Christ, Inc., v. Commissioner, T.C. Memo 1988-65, the Church formed a Bureau of Collection Department for the purpose of mediating between debtors and creditors where delinquency, contested claims, misunderstanding, performance failures, or any other condition alienating one person from another exists. The Church also established a Better Business Bureau ... as a department of the church for the purpose of serving all peoples and businesses by handling any and all

business complaints. The Church operated four commercial activities as departments. The court found that the Church was operated for other than exempt purposes, and was not described in section 501(c)(3) of the Code.

In Federation Pharmacy Services, Inc. v. Commissioner, 72 TC 687 (1969), affd 625 F.2d 804 (8th Cir. 1980), a pharmaceutical service operated by a nonprofit organization was not exempt as a charitable organization because it was operated for a substantial commercial purpose.

In B.S.W. Group, Inc. v. Commissioner, 70 TC 352, Dec 35,175, (1978) exempt status was denied a consulting firm where, among other factors, the taxpayer completely failed to show that its own services, or the services performed by its consultants, did not compete with commercial business.

Harding Hospital, Inc. v. United States, 505 F2d 1068 (1974), holds that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact. See also Christian Stewardship Assistance, Inc. v. Commissioner, 69 T.C. 1037, 1042 (1978).

In Better Business Bureau of Washington, DC v. United States, 326 U.S. 279 (1945), the extent to which an organization may engage in such nonexempt activities without losing its tax exempt status was set forth by the Supreme Court, where the Court stated that "the presence of a single (nonexempt) purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly (exempt) purposes.

An organization has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact. See Harding Hospital, Inc., *supra*. Determining whether an organization is operated primarily for commercial purposes is a facts and circumstances matter. The relevant factors in determining whether the organization's activities are to operate a commercial business producing net profits for petitioner or others include the particular manner in which the activities are conducted, the commercial hue of those activities, and the existence and amount of annual or accumulated profits. B.S.W. Group, Inc. v. Commissioner, *supra*.

Your primary activity is the provision of dispute resolution

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services to people involved in business disputes. The service is primarily intended for the members of ██████. The dispute process includes mediation and consultation with the parties to resolve the disputed issues. The disputants pay a filing fee and a mediation fee. The mediators and consultants are paid █% of the fee charged. No information was provided to indicate the fees paid are below cost or that the disputants were limited to IRC 501 (c) (3) organizations.

Rev. Rul. 72-369, supra, states that an organization is not exempt merely because its operations are not conducted for the purpose of producing a profit. The Rev. Rul. states that providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. Based upon the information presented you appear to be operating a consulting service that is similar to the organization in Rev. Rul. 72-369, supra, in that you provide consulting services for a fee. You do not provide services only to organizations exempt under IRC 501 (c) (3) or at substantially below cost. See. Rev. Rul. 72-529, supra. You are primarily providing services and benefiting business members of ██████.

You are operated similar to the Department Better Business Bureau in Universal Church, supra, in that you mediate disputes between debtor and creditor, helping to remove the enmity between them. You also were the outgrowth of a for-profit organization providing similar services similar to the Bureau of Collections in Universal Church. The information provided indicates that your mediation activities are commercial in nature.

Your services are provided to businesspersons in need of resolution services. While the services are provided primarily to ██████ members, they are not provided to a charitable class. Nor do you provide your services only to tax-exempt organizations. In B.S.W. Group, supra, the court found that the corporation that offered consulting services for a fee to nonprofit and limited resource organizations, some exempt and some not exempt, was not tax-exempt under section 501(c)(3) of the Code as the corporation was operated in a commercial manner. There the fees charged were set at or close to cost, the officers served without compensation. The record failed to show that the organization was not in completion with commercial enterprises. The court in B.S.W. Group, stated that charging a nominal fee that may in fact be lower than those charged by other firms, is not enough to prove that the petitioner's purposes are primarily exempt. You also have not provided information to show

[REDACTED]

that you are not operated in a commercial manner and are not in commercial competition with other mediation services.

You stated you are lessening the burdens of government. To show that an organization lessens the burdens of government it is necessary (1) to determine whether the governmental unit considers the activities to be a governmental burden, and (2) the activities must actually lessen such burden of the government. See Rev. Ruls. 85-1 and 85-2, supra. You have not provided any information to show that your activities (counseling and mediation of disputes) are considered a governmental burden or that the activities actually lessen such a burden. A state statute did not create you, nor have you shown that your activities are defined in a state statute. You have not provided any information that a governmental unit requested you to perform your primary activities or that you are an integral part of a larger program of a governmental unit. Based upon the information provided you have not shown you are lessening the burdens of government.

Based on the above, it is our conclusion that you do not qualify for exempt status under section 501(c)(3). See Better Business Bureau, supra. You are required to file federal income tax returns on Form 1120. Contributions to you are not deductible under section 170 of the Code.

Donors may not deduct contributions to you under section 170 of the Code. You are required to file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have the right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory

judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio EP/EO key district office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, EP/EO Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

You will expedite our receipt of your reply by using the following address on the envelope:

Internal Revenue Service
CP:E:EO:T:4 Rm 6236
1111 Constitution Avenue
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Gerald V. Sack
Chief, Exempt Organizations
Rulings Branch 4

OP:E:EO:T:4

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